

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of:

Assessment and Collection of
Regulatory Fees for
Fiscal Year 2004

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MD Docket No. 04-73

Comments



I. Introduction

The American Cable Association (“ACA”) submits these comments to support the Commission’s initiative to update the regulatory fee payment process, especially for small cable companies. The changes proposed in the NPRM and in these comments will reduce administrative burdens and costs, and better accommodate the unique needs of many very small cable operators.¹

To address the special circumstances of small cable companies, ACA proposes the following:

- Cable companies serving in the aggregate 1,000 or fewer subscribers should be exempt from regulatory fee payments.
- Cable operators exempt from paying regulatory fees should also be exempt from filing an annual Form 159.

¹ *In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2004*, Notice of Proposed Rulemaking, FCC 04-66, MD Docket No. 04-73, 2004 WL 602818 (rel. March 29, 2004) (“NPRM”).

- Many small, rural cable operators do not utilize the FCC's electronic form of payment, and instead rely on the U.S. mail. Therefore, regulatory fee payments should not be deemed late and subject to a 25% late penalty if postmarked on or before the FCC's deadline.

The American Cable Association. ACA represents nearly 1,000 cable companies that serve about 8 million cable subscribers, primarily in smaller markets and rural areas. ACA members range from small, family-run cable systems to multiple system operators focusing on smaller markets. About half of ACA's members serve fewer than 1,000 subscribers. As the Commission has often recognized, smaller cable operators face special challenges building, operating, and upgrading broadband networks in smaller markets and rural areas.

For many smaller companies, compliance with the numerous filings and fees imposed under FCC rules and regulations results in substantial administrative burdens and costs. One such filing are annual regulatory fee payments. These comments provide the Commission with suggestions on how to ease some of the burdens associated with the payment of regulatory fee payments for many very small cable companies.

II. Cable operators serving in the aggregate 1,000 or fewer subscribers should be exempt from paying annual regulatory fees.

In the NPRM, the Commission proposes that cable operators serving in the aggregate less than 250 basic service subscribers should be exempt from regulatory fee payments.² ACA supports the Commission's efforts to ease the burden of regulatory fee payments for smaller companies. To provide maximum relief to

² *NPRM* at ¶ 26.

companies that most need it and to do so at a minimum cost, ACA suggests increasing the threshold from 250 to 1,000 subscribers.

Extending the threshold to 1,000 subscribers would have the following results:

(a) it will provide some of the smallest cable operators with much-needed regulatory and administrative relief; and (b) the relief will not dramatically hinder the Commission's efforts to recover costs associated with the Commission's important activities.

Moreover, this exemption would more equitably distribute regulatory fee payments to larger companies that absorb far more Commission resources.

A. The Commission has recognized that small cable operators require regulatory relief.

Congress and the Commission have consistently expressed special concern for the ability of smaller cable companies to bear the costs and burdens of administrative obligations. The 1992 Cable Act and the 1996 Telecommunications Act both contain Congress' express recognition of this public interest through inclusion of specific small cable provisions. Section 543 of the Code is instructive for our purposes here. It provides regulatory relief for systems that serve fewer than 1,000 subscribers: "In developing and prescribing regulations pursuant to this section, the Commission shall design such regulations to reduce the administrative burdens and cost of compliance for cable systems that have 1,000 or fewer subscribers."³

In addition to Section 543, Commission regulations contain ample precedent for extending relief to this group of small cable companies. Commission regulations exempt systems serving fewer than 1,000 subscribers from a range of

³ 47 USC § 543(i). See also Section 301(c) 1996 Telecommunications Act (providing greater deregulation for small systems), codified at 47 USC § 543(m).

other obligations, again to reduce the burdens and costs of compliance on very small cable companies. For example, the Commission's regulations governing network nonduplication,⁴ syndicated exclusivity,⁵ sports blackouts,⁶ proof of performance,⁷ EAS test record retention,⁸ EAS handbook maintenance,⁹ and public inspection files,¹⁰ all contain exemptions for systems serving fewer than 1,000 subscribers.

Moreover, in dozens of orders granting waivers of its Emergency Alert System ("EAS") requirements, the Commission has acknowledged that the cost of installing EAS equipment would impose a financial hardship on many small cable systems.¹¹ In a recent report to Congress the Commission stated that the Enforcement Bureau,

⁴ 47 CFR § 76.95(a).

⁵ 47 CFR § 76.106(b).

⁶ 47 CFR § 76.111(f).

⁷ 47 CFR § 76.601(b)(1).

⁸ 47 CFR § 76.1711.

⁹ 47 CFR § 76.1714(b).

¹⁰ 47 CFR § 76.1700(a).

¹¹ See, e.g., *Big Sandy Telecom, Inc.; Request for Waiver of Section 11.11(a) of the Commission's Rules*, 17 FCC Rcd 11795 (2002); *Lovell Cable TV, Inc.; Request for Waiver of Section 11.11(a) of the Commission's Rules*, 17 FCC Rcd. 14195 (2002); *Panora Cooperative Cable Association, Inc.; Request for Waiver of Section 11.11(a) of the Commission's Rules*, 17 FCC Rcd. 11817 (2002); *Souris River Television, Inc.; Request for Waiver of Section 11.11(a) of the Commission's Rules*, 17 FCC Rcd. 10438 (2002); *WMW Cable Television Co.; Request for Waiver of Section 11.11(a) of the Commission's Rules*, 17 FCC Rcd. 10444 (2002).

through its Spectrum Enforcement Division, has issued more than 280 orders granting small cable television systems temporary waivers of these requirements.¹²

Each of these items provide ample support for an exemption for companies serving 1,000 or fewer subscribers. Viewed together, the question becomes, why *wouldn't* the Commission extend relief to these systems?

B. Relieving the regulatory fee payment burden for a small number of very small cable operators would have little bearing on total fees collected by the Commission.

Extending the threshold to 1,000 subscribers would provide much-needed administrative and financial relief for very small cable operators serving customers in rural areas. At the same time, because the fees collected from these small companies are minimal, the effect on the amount collected by the Commission would also be minimal. The Commission may even save costs associated with collecting regulatory fee payments from very small cable operators.

Moreover, this reduction would more equitably allocate regulatory costs. Because of reduced regulatory obligations in many areas, these small companies do very little “business” with the Commission. As a result, the Commission can conclude that these companies require fewer regulatory resources on a per subscriber basis, and an exemption from regulatory fees would strike a fair balance.

¹² *In the Matter of Section 257 Triennial Report to Congress; Identifying and Eliminating Market Entry Barriers for Entrepreneurs and Other Small Businesses*, Report, FCC 03-335, 2004 WL 253294 (rel. Feb. 12, 2004) (“*Triennial Report*”) at ¶ 78.

III. Cable operators exempt from filing regulatory fees should also be exempt from filing an annual Form 159.

The NPRM proposes that small cable companies exempt from regulatory fee payments still must annually file FCC Form 159.¹³ We suggest that this approach would impose unnecessary paperwork obligations on small cable companies and the Commission. Instead, small cable companies that fall under the 1,000 subscriber threshold should also be exempt from filing Form 159. To provide a means to verify compliance, a better approach would be a requirement to maintain records to support exempt status. All cable operators maintain these records for billing and for paying programming fees, so no additional paperwork would result. In any year that a company exceeds the threshold, the company would then be obligated to file and pay.

This approach aligns with several other Commission regulations. For example, under the network nonduplication and syndicated exclusivity regulations, a cable operator is obligated to notify the Commission when the number of subscribers served by a system exceeds 1,000.¹⁴ Adopting the same requirement under the regulatory fee regulations would consolidate notice obligations and save both the Commission and very small cable operators the burdens and costs of filing and processing the paperwork.

¹³ NPRM at ¶ 16.

¹⁴ 47 CFR §§ 76.95(a) and 76.106(b).

IV. Many small, rural operators do not utilize the FCC's electronic form of payment, and instead rely on the US mail. Therefore, regulatory fee payments should not be deemed late and subject to a 25% late penalty if it is postmarked on or before the FCC's deadline.

It should be no surprise to the Commission that many smaller companies still use United States postal services. Indeed, the Commission recently recognized that some small cable operators serving rural areas may not have access to computers with the hardware or capability to utilize the software necessary to submit certain FCC applications electronically.¹⁵ While ACA members are active in rolling out broadband in underserved, rural areas, the job is not complete.

Some small cable operators do not themselves use the Internet for tasks that to others may seem routine. It is important that the Commission consider this reality and tailor its rules appropriately. For this reason, regulatory fee payments should not be deemed late and subject to a 25% late penalty if it is postmarked on or before the FCC's deadline.

V. Conclusion.

ACA and its members fully support the Commission's efforts and needs to recover costs associated with the Commission's activities. At the same time, ACA recognizes the importance to the public interest of maintaining viable smaller cable companies and the need to provide regulatory relief in appropriate circumstances to further this public interest. Providing the relief asked for in these Comments will help result in this goal – a small number of very tiny cable companies will experience administrative and monetary relief that will go a long way towards easing burdens

¹⁵ *Triennial Report* at ¶ 127.

associated with operating their businesses. At the same time, the Commission should experience minimal impact on fees collected.

Respectfully submitted,

AMERICAN CABLE ASSOCIATION

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